

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

<b>United States District Court</b>	District	Eastern District of North Carolina
Name ( <i>under which you were convicted</i> ): JERRELL YEOMAN		Docket or Case No.: 7:11-CR-153-1BO
Place of Confinement: USP TERRE HAUTE		Prisoner No.: 55864-056
UNITED STATES OF AMERICA		Movant ( <i>include name under which convicted</i> )
V. JERRELL YEOMAN		

**MOTION**

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
310 NEW BERN AVENUE  
RALEIGH, NORTH CAROLINA 27601

(b) Criminal docket or case number (if you know): 7:11-CR-153-1BO

2. (a) Date of the judgment of conviction (if you know): 8/21/2012

(b) Date of sentencing: 8/21/2012

3. Length of sentence: 150 MONTHS IMPRISONMENT; 5 YEARS SUPERVISED RELEASE

4. Nature of crime (all counts):

COUNT 1 AND 7: CONSPIRACY TO INTERFERE WITH CONSPIRACY BY ROBBERY IN VIOLATION  
18 U.S.C. SEC. 1951

COUNT 8:INTERFERENCE WITH COMMERCE BY ROBBERY IN VIOL. OF 18 U.S.C. §§ 1951

COUNT 9 : USE AND CARRY A FIREARM DURING AND IN RELATION TO A CRIME OF VIOLENCE IN  
VIOLATION OF 18 U.S.C. § 924(C)

5. (a) What was your plea? (Check one)

(1) Not guilty  (2) Guilty  (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or  
what did you plead guilty to and what did you plead not guilty to?

ENTERED GUILTY PLEA TO COUNTS 1, 8, AND 9; COUNT 7 DISMISSED PURSUANT TO PLEA  
AGREEMENT

6. If you went to trial, what kind of trial did you have? (Check one)      Jury       Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?      Yes       No

8. Did you appeal from the judgment of conviction?      Yes       No

9. If you did appeal, answer the following:

(a) Name of court: UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

(b) Docket or case number (if you know): 13-4176

(c) Result: DISMISSED

(d) Date of result (if you know): 8/29/2013

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised:

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(g) Did you file a petition for certiorari in the United States Supreme Court? Yes  No

If "Yes," answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

  

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised:

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10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

  

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket of case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes  No

(2) Second petition: Yes  No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE: MR. YEOMAN'S CONVICTION UNDER 18 U.S.C. SEC. 924(C) VIOLATES HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS AND MUST BE VACATED.**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

IN LIGHT OF THE SUPREME COURT'S DECISION IN JOHNSON, HOBBS ACT ROBBERY NO LONGER QUALIFIES AS A "CRIME OF VIOLENCE" WITHIN THE MEANING OF SEC. 924(C), AND, THEREFORE, MAY NOT SERVE AS A PREDICATE FOR THAT OFFENSE. AS SUCH, MR. YEOMAN'S CONVICTION UNDER SEC. 924(C) IS BASED UPON THE UNCONSTITUTIONALLY VAGUE RESIDUAL CLAUSE OF THAT STATUTE AND MUST BE VACATED.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):  
\_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:  
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**GROUND TWO:** \_\_\_\_\_

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
\_\_\_\_\_

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(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:  
\_\_\_\_\_

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(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

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(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

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**GROUND THREE:**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court’s decision: \_\_\_\_\_

Result (attach a copy of the court’s opinion or order, if available):  
\_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is “Yes,” did you raise the issue in the appeal?

Yes  No

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(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court’s decision: \_\_\_\_\_

Result (attach a copy of the court’s opinion or order, if available):  
\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:

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**GROUND FOUR:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is “Yes,” state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court’s decision: \_\_\_\_\_

Result (attach a copy of the court’s opinion or order, if available):

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(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is “Yes,” did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed:

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Docket or case number (if you know): \_\_\_\_\_

Date of the court’s decision: \_\_\_\_\_

Result (attach a copy of the court’s opinion or order, if available):  
\_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is “No,” explain why you did not appeal or raise this issue:  
\_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

GROUND ONE WAS NOT RAISED PREVIOUSLY BECAUSE THERE WAS NO CASE LAW TO SUPPORT RELIEF.

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes  No

If “Yes,” state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

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(b) At the arraignment and plea:

JOEL MERRITT WAGONER, WILMINGTON, NORTH CAROLINA

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(c) At the trial:

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(d) At sentencing:

JOEL MERRITT WAGONER

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(e) On appeal:

JOSEPH A. DiRUZZIO, MIAMI, FLORIDA

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(f) In any post-conviction proceeding:

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(g) On appeal from any ruling against you in a post-conviction proceeding:

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16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

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(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

THE ONE-YEAR STATUTE OF LIMITATIONS HAS NOT RUN BECAUSE THE ONE YEAR CLOCK SHOULD BEGIN FROM THE TIME THE U. S. SUPREME COURT RENDERED ITS DECISION IN JOHNSON V. UNITED STATES, ON JUNE 26, 2015.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

**VACATE HIS CONVICTION ON COUNT 9.**

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or any other relief to which movant may be entitled.

/s/ Sherri Royall Alspaugh  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 6/6/2016.  
(month, date, year)

Executed (signed) on 6/6/2016 (date)

/s/ Sherri Royall Alspaugh  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

**APPOINTED ATTORNEY IS FILING THIS MOTION ON PETITIONER'S BEHALF.**

*CERTIFICATE OF SERVICE*

I HEREBY CERTIFY that a copy of the foregoing was served upon:

**SETH MORGAN WOOD**

U. S. Attorney's Office  
310 New Bern Ave.  
Suite 800  
Raleigh, NC 27601

**JERRELL YEOMAN**

Reg No. 55864-056  
USP TERRE HAUTE  
P.O. BOX 33  
TERRE HAUTE, IN 47808

by electronically filing the foregoing with the Clerk of Court on June 6, 2016, using the CM/ECF system which will send notification of such filing to the government. Service on Mr. Yeoman was made by U.S. Mail.

This the 6<sup>th</sup> day of June, 2016.

/s/ Sherri Royall Alspaugh  
SHERRI ROYALL ALSPAUGH  
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Chief Trial Attorney  
Attorney for Defendant  
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N.C. State Bar No. 17581  
LR 57.1 Counsel  
Appointed